IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 13-30244

DEAN VICKNAIR

Plaintiff – Appellant

v.

LOUISIANA DEPT. OF PUBLIC SAFETY AND CORRECTIONS AND THE STATE OF LOUISIANA

Defendants – Appellees

On appeal from the United States District Court For the Middle District of Louisiana

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Petition for Panel Rehearing

Respectfully submitted,
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Certificate of Interested Persons

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal:

Dean Vicknair– plaintiff/appellant;

Dan M. Scheuermann – counsel for plaintiff/appellant;

Louisiana Department of Public Safety and Corrections– defendant/appellee

Mary Lou Blackley– counsel for defendant/appellee;

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s/Dan M. Scheuermann

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Request for Oral Argument

The plaintiff-appellant, Dean Vicknair, respectfully requests oral argument in this case due to the complexities of both the legal and factual issues involved and to bring to the attention of the panel claimed errors of fact and law in its opinion of February 4, 2014. This Honorable Court would benefit from a face-to-face confrontation wherein the defendant/appellee must explain, and answer pertinent questions about, just why it was necessary to subject Vicknair to illegal constructive discharge, retaliation, and a hostile work environment. Mr. Vicknair wants the opportunity to face the three-judge panel cross-examination in order to advance the merits of his argument.

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ARGUMENT:

In accordance with Fifth Circuit Rule 40.2, Dean Vicknair herein respectfully brings to the attention of the panel claimed errors of fact and law in its opinion. The opinion cites *Landgraf v. USI Film Prods.,* 968 F.2d 427, 430 (5th Cir. 1992),[1] distinguishable on its facts: "…at the time Landgraf resigned USI was taking action reasonably calculated to alleviate the harassment."[2] By contrast, at the time Vicknair resigned, DPS was not "…taking action reasonably calculated to alleviate the harassment."[3] And his "…motivation for quitting…"[4] was not any "…conflicts and unpleasant relationships…"[5] with his co-workers but much else.[6] Nor had DPS given Selvaratnam "…its most serious form of reprimand and acted to reduce his contact with…"[7] Vicknair at the workplace.[8] He did "…report these incidents to…"[9] DPS before resigning.[10] And this was not "…the first documented offense by an individual employee"[11] against Selvaratnam.[12] Furthermore Vicknair does "…prove that 'working conditions would have been so difficult or

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[1] Opinion, p. 7.
[2] Id.
[3] Id. See ROA. 122, 148-150, 416-417, 590, 610.
[4] *Landgraf, supra*, at 429.
[5] Id. See Original Brief of Appellant (OBA), p. 13. ROA. 1772-1775.
[6] OBA, pp. 4-20. See n. 36, 39-40, 43-46.
[7] *Landgraf, supra,* at 429.
[8] ROA. 611-617, 1630 (Pla-1).
[9] *Landgraf, supra,* at 429.
[10] Reply Brief (RB), p. 4. ROA. 503-509, 610, 899-944, 970-971, 980-985, 1630 (Pla-2-6, 8, 9, 12).
[11] *Landgraf, supra,* at 429.
[12] ROA. 611-617, 1630 (Pla-1).

unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign.' *Bourque v. Powell Electrical Mfg. Co.,* 617 F.2d 61, 65 (5th Cir. 1980); *Jurgens v. EEOC,* 903 F.2d 386, 390-91 (5th Cir. 1990)."[13]

The opinion then cites *Adams v. Unione Mediterranea Di Sicurta*, 364 F.3d 646 653 (5th Cir. 2004),[14] likewise distinguishable on its facts:

> UMS further argues that venue is improper in this case because it does not comport with the venue provisions of the Brussels Convention of 1968. Because UMS did not sufficiently raise this issue in the prior appeal the argument is abandoned and we will not address the merits of the issue here.[15]

Vicknair, on the other hand, did "…sufficiently raise this issue in the prior…"[16] briefings regarding retaliation.[17]

Feist v. La., Dep't of Justice, Office of the Att'y Gen., 730 F.3d 450, 452 (5th Cir. 2013)[18] informs the case sub judice:

> A plaintiff alleging retaliation may satisfy the causal connection element by showing '[c]lose timing between an employee's protected activity and an adverse action against him.'[19]

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[13] *Landgraf,* supra, at 429-430. See OBA, pp. 4-20; n. 36, 39-40, 43-46.
[14] Opinion, p. 7.
[15] *Adams, supra*, at 653.
[16] Id.
[17] OBA, pp. 20-25, 32-44; ROA. 412-426.
[18] Opinion, p. 7.
[19] *Feist, supra*, at 454-455.

For Vicknair the timing could not be closer.[20] There is also "…other evidence of retaliation,.."[21] including "…an employment record that does not support dismissal,..."[22] Based on this evidence, DPS has not "…satisfied its burden of showing a legitimate, non-retaliatory reason for terminating[Vicknair]. *See Medina v. Ramsey Steel Co.,* 238 F.3d 674, 684-85 (5th Cir. 2001) (noting that evidence of poor work performance satisfies burden)."[23] In any event Vicknair has "…shown any basis for rescinding the…"[24] February 4, 2013, opinion of this Honorable Court.[25]

The opinion then cites *Stewart v. Miss. Transp. Comm'n,* 586 F.3d 321, 331 (5th Cir. 2009).[26] The dissent therein better informs the case sub judice:

> After having been transferred away from her abuser in 2004, Stewart testified that she was amazed to learn that Loftin would again become her supervisor in 2006. Hope springs eternal, and perhaps MDOT thought Loftin had turned over a new leaf. Such hopes were almost immediately dashed….[27]

Thus was Vicknair's experience at DPS.[28] "Viewed against the backdrop of what…"[29] Vicknair "…had already experienced from…"[30] Selvaratnam, his 2004

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[20] RB, p. 5, n. 35. See ROA. 423, 679-680, 1630 (Def-5, pp. 4-5), 1646, 1804-1805.
[21] *Feist, supra,* at 454.
[22] Id. ROA. 1630 (Def. -2, p. 5), 1654-1655, 1666-1662, 1684-1686, 1696-1697, 1772-1776.
[23] *Feist, supra,* at 455.
[24] Id.
[25] OBA, RB..
[26] Opinion, pp. 7-8.
[27] *Stewart, supra*, at 333.
[28] Original Brief of Defendant-Appellee (OBD-A), p. 10; RB, p. 7.
[29] *Stewart, supra*, at 333.
[30] Id.

conduct goes from not merely boorish but continues being "…legally actionable."[31] Vicknair "…was certainly justified in concluding that…"[32] Selvaratnam "…had not 'learned his lesson' and that the 2009 "…conduct was reminiscent of the prior wrongful conduct. This was not merely…"[33] Vicknair's "…subjective perception but an objectively reasonable conclusion from the…"[34] 2009 "…events in the context of what had occurred previously:"[35] Thus "[c]redibility determinations, of course, are not the stuff of summary judgment affirmances."[36] Unlike that of *Hernandez v. Yellow Transp., Inc.*, 670 F.3d 644, 657 (5th Cir. 2012), the Internal Affairs "investigation" initiated by DPS occurred during Vicknair's employment and it was used as a tool for his discharge.[37]

The opinion cites "*McCoy v. City of Shreveport*, 492 F.3d 551, 557 (5th Cir. 2007),"[38] distinguishable on its facts:

> …SPD never indicated that she would not be reinstated to her previous position when cleared medically to return to work. She was not reassigned to menial or degrading work, and she never received an offer of early retirement.[39]

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[31] Id.
[32] Id., at 334.
[33] Id.
[34] Id.
[35] Id. ROA. 1630 (Pla-1), 1684.
[36] *Stewart, supra*, at 333.
[37] ROA. 1630 (Def-3). See OBA, pp. 7, 14-19, RB, pp. 4-5.
[38] *McCoy, supra,* at 557, 558.
[39] Id., at 558. ROA. 680, 737, 1732, 1807.

DPS did indicate that he "…would not be reinstated to…"[40] his previous position.[41] And Vicknair was "…reassigned to menial or degrading work,..:"[42] Those "…actions, when viewed in the context of the circumstances surrounding them, were…"[43] calculated by DPS to encourage Vicknair's resignation and do "…meet the established standard for a constructive discharge."[44] As to retaliation there is also this recognition of Vicknair's plight:

> Consequently, placement on administrative leave may carry with it both the stigma of the suspicion of wrongdoing and possibly significant emotional distress. Instances of administrative leave can also negatively affect an officer's chances for future advancement.[45]

The opinion cites *Gollas v. Univ. Tex. Health Sci. Ctr. At Hous.,* 425 F.App'x 318, 321 (5th Cir. 2011) (citing *Byers v. Dall. Morning News, Inc.*, 209 F.3d 419, 427 (5th Cir. 2000)).[46] The latter case is distinguishable on its facts:

> …there is no evidence showing that Brown treated similarly situated, non-white employees any differently….[47]

Vicknair's evidence shows that DPS treated similarly situated employees, who did not complain about sex harassment, differently.[48] As Vicknair was not the

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[40] *McCoy, supra*, at 558.
[41] ROA. 1630 (Def -7, -8).
[42] *McCoy, supra*, at 558. See ROA. 680, 737, 1732, 1807.
[43] *McCoy, supra*, at 558.
[44] Id. OBA, pp. 3-20.
[45] Id., at 560.
[46] Opinion, p. 8.
[47] *Byers, supra,* at 429.
[48] ROA. 1709, 1712.

perpetrator, the former case is inapposite.[49] Furthermore "[b]ecause the summary-judgment record reflects that Dr. Reichman was unaware of a sexual-harassment complaint, there is no genuine dispute of material fact on whether he harbored retaliatory animus."[50] Selvaratnam was certainly aware of Vicknair's complaints and "…he harbored retaliatory animus."[51] In any event Vicknair's "…subjective belief,.."[52] comes with more.[53]

Aryain v. Wal-Mart Stores Tex. LP, 584 F.3d 473, 485 (5th Cir. 2008) says this:

> Also, Aryain never raised any complaint about the negative treatment she supposedly endured in the infant department. After discovering that she was left off the schedule, Aryain resigned just a day or two later, giving Wal-Mart no opportunity to improve her situation in the infant department. In the constructive discharge context, we have recognized that "part of an employee's obligation to be *reasonable* is an obligation not to assume the worst, and not to jump to conclusions too fast."[54]

Vicknair, by contrast, made numerous complaints[55] and resigned more than six months after Selvaratnam installed Chris Artall as Vicknair's supervisor.[56] He gave DPS numerous opportunities to improve his situation in the IT department.[57]

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[49] *Gollas, supra,* at 320.
[50] Id., at 326.
[51] Id. See ROA. 405, 423, 434, 440, 478, 1630 (Pla-1, -3, -5, -6, -9, -12, Proffer -1; Def -5.
[52] Opinion, p. 8.
[53] ROA. 1630, 1653-1751 (testimony of Weber, Louque and Hoyt).
[54] *Aryain v. Wal-Mart Stores,* 534 F.3 473, 481-482 (5th Cir. 2008).
[55] ROA. 503-509, 610, 1630 (Pla – 2-6, 8, 9, 12).
[56] ROA. 1630 (Def – 5), 1776, 1836-1837.
[57] ROA. 1630 (Pla – 2-6, 9, 12; Def – 4, 5), 1775-1776, 1836-1837.

Not until the very end did he "…assume the worst."[58] Thus did Vicknair exert considerable effort to allow DPS "…the opportunity to remedy the problems…"[59] he identified.

The opinion cites *Pacheco v. Mineta*, 448 F.3d 783, 788-89 (5th Cir. 2006) and *Haverda v. Hays Cnty., Tex.*, 723 F.3d 586, 591 (5th Cir. 2013). What is omitted from the former case is what immediately precedes the opinion's quoted passage:

> The scope of the exhaustion requirement has been defined in light of two competing Title VII policies that it furthers. On the one hand, because 'the provisions of Title VII were not designed for the sophisticated,' and because most complaints are initiated pro se, the scope of an EEOC complaint should be construed liberally.[60]

That the District Court "…pretermitted the question of whether Vicknair exhausted administrative remedies and dismissed the constructive-discharge claim on the merits,"[61] was wrong on both counts.[62]

As to the latter case the opinion again omits what immediately precedes the quoted matter:

> A court considering a motion for summary judgment must consider all facts and evidence in the light most favorable to the nonmoving party. Id. (citing *United Fire & Cas. Co. v. Hixson Bros., Inc.,* 453 F.3d 283, 285 (5th Cir. 2006)). Moreover, a

[58] ROA. 35, 1630 (Pla – 12, p. 5).
[59] *Aryain, supra*, at 482.
[60] *Pacheco, supra*, at 788.
[61] Opinion, pp. 9-10.
[62] OBA, pp. 3-20, RB, pp. 16-21.

> court must draw all reasonable inferences in favor of the nonmoving party and may not make credibility determinations or weigh the evidence. *Vaughn,* 665 F.3d at 635 (citing *Sandstad v. CB Richard Ellis, Inc.,* 309 F.3d 893, 896 (5th Cir. 2002)). In addition, a court "must disregard all evidence favorable to the moving party that the jury is not required to believe." *Reeves v. Sanderson Plumbing Prods., Inc.,* 530 U.S. 133, 151, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000)….[63]

Like plaintiff Haverda, Vicknair "…has presented sufficient evidence to raise a genuine dispute as to a material fact relating to his…"[64] claims: "…he was aware of who his friends and who his enemies were."[65] Thus should this Honorable Court "…REVERSE the district court's grant of summary judgment to Appellees and REMAND for further proceedings…."[66]

The opinion cites *Fine v. GAF Chem. Corp*., 995 F.2d 576, 578 (5th Cir. 1993) and *Simmons-Myers v. Caesars Entm't Corp*., 515 F.App'x 269, 272 (5th Cir.).[67] As did the plaintiff in the first case cited, Vicknair "…asks the court to liberally construe her EEOC charge. See *Terrell v. U.S. Pipe & Foundry Co.*, 644 F.2d 1112, 1123 (5th Cir. Unit B 1981)."[68] And to also determine that "…the grant of summary judgment is VACATED, and the case is REMANDED for further proceedings…."[69] As to the second case cited, Vicknair's "…charge has stated

[63] *Haverda, supra*, at 591.
[64] Id., at 588.
[65] ROA. 434. See also ROA. 405, 423, 440, 478.
[66] *Haverda, supra*, at 589.
[67] Opinion, p. 10.
[68] *Fine, supra*, at 577-578.
[69] Id., at 578.

sufficient facts to trgger an EEOC investigation, id., and to put an employer on notice of the existence and nature of the charges against…"[70] it.[71]

Contrary to the opinion, "…the facts alleged in the second EEOC complaint put DPS on notice of a possible constructive-discharge claim:"[72]

> Dear Ms. Boudreaux:
>
> The following is a response to your letter titled "Intended Termination"….[73]

Therefore Vicknair did "…exhaust administrative remedies and…"[74] can "…seek judicial relief on that claim. Summary judgment was…"[75] improper.

The opinion next cites *Smith & Fuller, P.A. v. Cooper Tire & Rubber Co.*, 685 F.3d 486, 488 (5th Cir. 2012), *KeyBank Nat'l Ass'n v. Perkins Rowe Assocs., LLC*, No. 12-30998, 2013 WL 4446820, at *5 (5th Cir. 21 Aug. 2013), citing *Ins. Corp. of Ireland, Ltd. V. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 707 (1982)) and *Chilcutt v. United States,* 4 F.3d 1313, 1322 (5th Cir. 1993).[76]

The first case is distinguishable on it s facts:

> …Smith allowed dissemination of the protected information to personal injury lawyers who sue Cooper and other tire manufacturers.[77]

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[70] *Simmons-Myers, supra*, at 272-273.
[71] ROA. 35, 82, 509, 980-985.
[72] Opinion, p. 11.
[73] ROA. 980. See ROA. 35, 82, 980-985.
[74] Opinion, p. 11.
[75] Id.
[76] Opinion, p. 11.
[77] *Smith & Fuller, supra*, at 488.

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> Appellants concede that they violated the court's Protective Order.[78]

So, too, is the second case:

> …the magistrate judge and the district court, who together issued some fifteen orders related to discovery.[79]

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> At a subsequent status conference, the district judge specifically discussed the imposition of sanctions, and even mentioned possibly placing Spinosa in jail.[80]

As is the third case:

> Petitioners' failure to supply the requested information as to its contacts with Pennsylvania supports "the presumption that the refusal to produce evidence…was but an admission of the want of merit in the asserted defense."[81]

And the fourth "…case is also similar to *Insurance Corp. of Ireland....*"[82]

There is no "…inconsistency between Vicknair's claim he did not have access to the e-mails and his inclusion of a confidential, undisclosed e-mail (Jones' e-mail to DPS' general counsel) in his opposition to DPS' second summary-judgment motion."[83] The District Court should not have "…rejected Vicknair's proposed solutions, including having DPS search its own systems for a log file to track Vicknair's previous access or for DPS' attorneys to drive to Baton Rouge

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[78] Id., at 490.
[79] *KeyBank, supra*, at 2103 U.S. App. LEXIS 17544, *9.
[80] Id., * 13.
[81] *Ins. Corp. of Ireland, supra*, at 456 U.S. 709, 102 S.Ct. 2099, 2107, 72 L.Ed.2d 492.
[82] *Chilcutt, supra*, at 1321.
[83] Opinion, pp. 11-12. ROA. 1332-1333.

with a laptop to have Vicknair transfer the database digitally."[84] Nothing in the evidence/record shows "…Vicknair's refusal to satisfy his discovery obligations."[85] The sanctions were both unjust and unrelated to the discovery order. Thus was there an abuse of discretion.

The opinion states:

> Evidentiary rulings by the district court are reviewed for abuse of discretion. *E.g., United States v. Pruett,* 681 F.3d 232, 243 (5th Cir. 2012); *see* Fed.R.Evid. 103 (Rulings on Evidence). 'The application of the attorney-client privilege is a question of fact, to be determined in light of the purpose of the privilege and guided by judicial precedents.' *United States v. Nelson*, 732 F.3d 504, 517-18 (5th Cir. 2013) (citation and internl quotation marks omitted); *see* Fed.R.Evid. 501 (Privilege in General). The application of controlling law is reviewed *de novo*; factual findings, for clear error. *Nelson,* 732 F.3d at 518 (citation omitted).[86]

The former case is inapposite "For the reasons stated above, Appellants' convictions and sentences are AFFIRMED."[87]

The District Court ignored the facts that DPS did not carry its burden of proof:

> To assert the privilege, a party must show: (1) a confidential communication; (2) to a lawyer or subordinate; (3) for theprimary purpose of securing a legal opinion, legal services, or assistance in the legal proceeding. *United States v. Robinson*, 121 F.3d 971, 974 (5th Cir. 1997). The privilege does not protect "everything that arises out of the existence of

[84] Opinion, p. 12. OBA, pp. 26-27. ROA. 1336-1338, 1630 (Def-2, pp. 2, 7, 8), 1799-1802.
[85] Opinion, p. 12. ROA. 1-1932.
[86] Opinion, p. 12.
[87] *U.S. v. Pruett, supra*, at 250.

> an attorney-client relationship," *United States v. Pipkins*, 528 F.2d 559, 563 (5th Cir. 1976).[88]

There is also this to consider:

> In-house corporate counsel face an additional challenge in preserving the attorney-client privilege while functioning in the dual role of legal counselor and business advisor. As the Court of Appeals of New York explains in *Rossi v. Blue Cross and Blue Shield of Greater New York,* 73 N.Y.2d 588 (N.Y. 1989), unlike outside lawyers who are retained to provide legal advice for a discrete, particular legal issue, in-house counsel may be corporate officers with a combination of business and legal responsibilities who have a continuing relationship with their corporate clients. In *Rossi,* the court held that in light of the closeness of that ongoing, permanent relationship, in-house counsel should be subject to stricter scrutiny when they assert the attorney-client privilege. As such, in-house counsel should be aware that some courts may demand heightened evidence indicating that the communications between the lawyer and corporate client were for the purpose of providing legal advice.[89]

The correspondence from Ronnie Jones to in-house counsel is dated August 7, 2009. Vicknair did not file his charge with the EEOC until September 3, 2009, nearly a month after the date of the correspondence and, therefore, could not have been in anticipation for litigation. Secondly, in-house counsel did not participate in the litigation. Therefore the communication is not privileged.

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[88] *Nelson, supra*, at 518.

[89] Raymond L. Sweigart, *Attorney-Client Privilege, Pitfalls and Pointers for Transactional Attorneys*, Vol. 17, No. 4, ABA, Business Law Section, Business Law Today (March/April 2008).

CONCLUSION

The opinion cites the inapposite *Cardenas v. United of Omaha Life Ins. Co.*, 731 F.3d 496, 499 (5th Cir. 2013)[90] "…claim for benefits from a life insurance policy taken out by Cardenas's daughter,…"[91] Be that as it may, the jury at Vicknair's trial did "…have a legally sufficient evidentiary basis to find for the party on…"[92] each and every issue.[93] As for the retaliatory animus of Boudreaux there is this:

> H.R. never received any copies of – we didn't know Dean had filed a grievance.[94]
>
> *******
>
> Without having given Vicknair the opportunity to give hie side of the story, she levels an accusation against of "…disruption of our workplace."[95]
>
> *******
>
> Received Cease and Desist Order signed by Ms. Boudreaux regarding voice recording in the workplace.[96]

Apart from Boudreaux's own retaliatory animus, there is this evidence also not addressed by the opinion:

> The timing alone shows that Selvaratnam, once he reviewed, in 2009, the transcript of Vicknair's earlier testimony, told

[90] Opinion, p. 13.
[91] *Cardenas, supra,* at 497.
[92] Id.
[93] ROA. 1630, 1653-1751, 1771-1915.
[94] OBA, p. 34. ROA. 1630, 1653-1751, 1771-1915.
[95] OBA, p. 35. ROA. 1630, (Pla-10, para. 3).
[96] OBA, p. 36. ROA. 1775-1776, 1836. See ROA. 1630 (Def. -5, p. 4).

> Dennis Weber "…he was aware of who his friends and who his enemies were."[97]

The opinion did not follow the dictate of its own case:

> The Court "'must draw all reasonable inferences in favor of the nonmoving party, and [we] may not make credibility determinations or weigh the evidence.'"[98]

It did engage in credibility calls:

> By late June 2012, DPS still had not received copies of the requested files or access to Vicknair's electronic database. [99]

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> …DPS' deputy secretary, Edmonson, was called, out of order, as a witness by DPS. He testified he had no qualms about reprimanding or even firing friends if they disobeyed rules, and he did not hold grudges against employees for filing grievances.[100]

There was the weighing of evidence:

> …he was not authorized to peruse employee e-mails without prior authorization.[101]

And the opinion ignores the import of another of its cases:

> … the ultimate decisionmaker could inherit the taint of discriminatory intent if he "merely acted as a rubber stamp,…[102]

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[97] RB, p. 5. ROA. 423. See also ROA. 679-680, 1630 (Def – 3, pp. 4-5), 1646, 1864-1865.
[98] *Russell v. McKinney Hospital Venture,* 235 F.3d 219, 222 (5th Cir. 2000), quoting *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 120 S.Ct. 2097, 2110, 147 L.Ed.2d 105 (2000)).
[99] Opinion, p. 4.
[100] Opinion, p. 6.
[101] Opinion, p. 5.
[102] *Russell v. University of Texas,* 234 Fed.Appx. 195, 203 (5th Circ. 2007).

> …the degree to which the ultimate decisionmaker based his decision on an independent investigation is a question of fact reserved for the jury).[103]

And the analysis of Justice Scalia:

> …if an employer isolates a personnel official from an employee's supervisors, vests the decision to take adverse employment actions in that official, and asks that official to review the employee's personnel file before taking the adverse action, then the employer will be effectively shielded from discriminatory acts and recommendations of supervisors that were *designed and intended* to produce the adverse action. That seems to us an implausible meaning.[104]

Applying the Supreme Court "…analysis to the facts of this case, it is clear that …"[105] this petition should be granted and the District Court judgment reversed.

[103] Id., at 204.
[104] *Staub v. Proctor Hosp.,* 131 S.Ct. 1186, 1193, 179 L.Ed.2d 144 (2011).
[105] Id., at 131 S.Ct. 1194.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed via CM/ECF and that a copy thereof is being served upon counsel of record via the Court's electronic notification system.

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Baton Rouge, Louisiana, this 18th day of February, 2014.

/s/ *Dan M. Scheuermann*
Dan M. Scheuermann (#11767)

CERTIFICATE OF COMPLIANCE

Pursuant to 5th Cir.R. 32.2.7(c), undersigned counsel certifies that this original brief complies with the type-volume limitations of 5th Cir.R. 32.2.7(b).

1. Exclusive of the portions exempted by 5th Cir.R. 32.2.7(b)(3), this brief contains 15 pages printed in a proportionally spaced typeface, pursuant to FRAP 40(b).
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4. Undersigned counsel understands that a material misrepresentation in completing this certificate, or circumvention of the type-volume limits in 5th Cir.R. 32.2.7, may result in the Court's striking this brief, and imposing sanctions against the person who signed it.

Signed this 18th day of February, 2014.

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